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**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA**

Case No.

**MARGARITA SERRANO**, on behalf ) **CLASS ACTION COMPLAINT**

of herself and all others similarly )

situated, )

**Plaintiff,** )

vs. )

**AUTOMOTIVE RECOVERY** )

**SERVICES, INC.,** )

**Defendant.** )

1. VIOLATION OF CALIFORNIA  
UNFAIR COMPETITION LAW;
2. VIOLATION OF CALIFORNIA  
DATA BREACH ACT; and
3. NEGLIGENCE.

**INTRODUCTION**

1. MARGARITA SERRANO (“PLAINTIFF”) brings this class action for damages, injunctive relief, and any other available legal or equitable remedies, resulting from the illegal actions of AUTOMOTIVE RECOVERY SERVICES, INC. (“DEFENDANT”) and its related entities, subsidiaries and agents, in failing

1 to secure and protect its users' personal information ("INFORMATION") provided  
2 to DEFENDANT, which encompasses names, social security numbers, street  
3 addresses, e-mail addresses, passwords, phone numbers, driver's license numbers  
4 and other information, in accordance with both industry security standards and  
5 DEFENDANT's own security standards. PLAINTIFF alleges as follows upon  
6 personal knowledge as to herself and her own acts and experiences, and, as to all  
7 other matters, upon information and belief, including investigation conducted by  
8 her attorneys.  
9  
10  
11

12 2. Despite assuring its users that it will provide them with reasonable  
13 protection in handling its users' INFORMATION, the security standards employed  
14 by DEFENDANT have resulted in breaches of DEFENDANT's networks and  
15 software.  
16

### 17 **JURISDICTION AND VENUE**

18  
19 3. Jurisdiction is proper under the Class Action Fairness Act, 28 U.S.C.  
20 § 1332(d)(2), because the claims of the individual class members, when aggregated  
21 among a proposed class numbering in the millions, exceeds the \$5,000,000  
22 threshold for federal court jurisdiction. DEFENDANT is an Indiana Corporation.  
23 Further, PLAINTIFF alleges a national class, which will result in at least one class  
24 member belonging to a different state than that of DEFENDANT. Therefore, both  
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1 elements of diversity jurisdiction under the Class Action Fairness Act of 2005  
2 (“CAFA”) are present, and this Court has jurisdiction.

3 4. Venue is proper in the United States District Court for the Northern  
4 District of California pursuant to 28 U.S.C. § 1391(b) and 1441(a) because the  
5 events giving rise to PLAINTIFF’s causes of action against DEFENDANT  
6 occurred within the State of California and the County of San Mateo as  
7 PLAINTIFF resides in San Bruno, California and within this judicial district.  
8  
9

### 10 **PARTIES**

11  
12 5. PLAINTIFF is an individual citizen and resident of the County of San  
13 Mateo, State of California.

14  
15 6. DEFENDANT is an Indiana Corporation, operating nationally, in the  
16 business of automotive salvage and auction processing. DEFENDANT may also  
17 be known, insofar as it may be relevant to this cause of action, as VEHICLE  
18 DONATION PROCESSING CENTER. For the purposes of this complaint, the  
19 defendant will be referred to only as “DEFENDANT” henceforth.  
20  
21

22 7. PLAINTIFF is informed and believes, and thereon alleges, that at all  
23 times relevant, DEFENDANT conducted business in the State of California.  
24

### 25 **FACTUAL ALLEGATIONS**

26 8. In or around May 2015, DEFENDANT discovered that PLAINTIFF’s  
27 personal information had been exposed to unauthorized persons (“hackers”).  
28

1 PLAINTIFF donated a vehicle to a separate charitable organization, a transaction  
2 that DEFENDANT administered, at some time between 2005 and 2014 (“donation  
3 period”), and as part of that administrative process, DEFENDANT collected  
4 information from PLAINTIFF and everyone making similar donations  
5 administered through DEFENDANT (“the INFORMATION”). All  
6 INFORMATION collected during the donation period was exposed to hackers  
7 from around July 2012 through May 2015.  
8

9  
10 9. DEFENDANT did not notify PLAINTIFF until July 2015,  
11 approximately two months after discovering the exposure of PLAINTIFF’s and  
12 class members’ INFORMATION (hereinafter, the “notice” or “notice letter”).  
13

14  
15 10. PLAINTIFF believed, based on DEFENDANT’s representations, that  
16 INFORMATION given to DEFENDANT would be safe and DEFENDANT would  
17 take the measures required to secure her INFORMATION.  
18

19 11. PLAINTIFF alleges upon information and belief that DEFENDANT  
20 represented to PLAINTIFF through statements or omissions that DEFENDANT’s  
21 security measures were up to industry standards and that the security measures were  
22 sufficient to prevent breaches that would expose her INFORMATION to theft.  
23

24  
25 12. PLAINTIFF alleges upon information, belief, and PLAINTIFF’s  
26 experience of her information being exposed for nearly three years before  
27  
28

1 DEFENDANT noticed a breach, that DEFENDANT's security measures were in  
2 fact not as represented and were in fact substandard.

3 13. PLAINTIFF alleges upon information and belief that DEFENDANT  
4 receives fees for the automotive donations that it processes for charities, either in  
5 the form of invoicing the charities or receiving a percentage of each donation,  
6 thereby profiting from PLAINTIFF's donation and INFORMATION.  
7  
8

9 14. PLAINTIFF alleges upon information and belief that DEFENDANT  
10 represented to PLAINTIFF through statements or omissions that PLAINTIFF must  
11 use DEFENDANT's services if she wishes to donate her automobile, and that in  
12 order to do so through DEFENDANT's services, she must divulge  
13 INFORMATION to DEFENDANT.  
14  
15

16 15. By giving INFORMATION to DEFENDANT, PLAINTIFF received  
17 no benefit while DEFENDANT received fees for its services.  
18

19 16. PLAINTIFF would never have given INFORMATION to  
20 DEFENDANT had DEFENDANT represented to PLAINTIFF its actual level of  
21 computer security. Had PLAINTIFF understood that her INFORMATION was not  
22 safe with DEFENDANT, she would never have given INFORMATION to  
23 DEFENDANT.  
24  
25

26 17. DEFENDANT gave neither PLAINTIFF nor the general public any  
27 reasonable opportunity to discover the true nature of DEFENDANT's security  
28

1 measures or the safety and security of their INFORMATION before giving it to  
2 DEFENDANT.

3 18. DEFENDANT later confirmed this security breach and neither  
4 promptly notified its PLAINTIFF about the breach nor that her INFORMATION  
5 had been compromised.  
6

7 19. Furthermore, DEFENDANT did not take adequate remedial  
8 measures, thereby causing PLAINTIFF to incur further financial damage and risk.  
9 DEFENDANT offered PLAINTIFF twelve (12) months of AllClear services  
10 starting on the date of receipt of the notice letter. The financial risk to which  
11 DEFENDANT exposed PLAINTIFF through its intentional, reckless, and  
12 fraudulent actions is ongoing and is not and will not be remedied with twelve  
13 months of the identity protection services mentioned herein.  
14  
15  
16

17 20. Furthermore, AllClear PRO, one of the AllClear services that  
18 DEFENDANT believed would help remedy the damage, requires PLAINTIFF to  
19 give her INFORMATION to AllClear.  
20  
21

22 21. DEFENDANT knew or should have known that its products and  
23 services were not secure and left the INFORMATION of PLAINTIFF and other  
24 members of The Class vulnerable to theft.  
25

26 22. DEFENDANT recklessly, or as a matter of gross negligence, failed to  
27 provide reasonable and adequate security measures.  
28

1           23.   Additionally, DEFENDANT failed to notify PLAINTIFF and the  
2 other members of The Class in a timely manner of the security breach, as required  
3 by law.  
4

5           24.   PLAINTIFF and The Class have all suffered irreparable harm and  
6 monetary damages as a result of DEFENDANT's unlawful and wrongful conduct  
7 heretofore described.  
8

9                                   **CLASS ACTION ALLEGATIONS**

10           25.   PLAINTIFF brings this action on behalf of herself and on behalf of  
11 all others similarly situated ("The Class"). PLAINTIFF represents, and is a  
12 member of, The Class, consisting of:  
13  
14

15                   All persons within the United States who had an account  
16 with DEFENDANT whose personal information was  
17 compromised as a result of the data breach that occurred  
18 on or about July 2012 through the date of filing.

19           26.   DEFENDANT and its employees or agents are excluded from The  
20 Class. PLAINTIFF does not know the number of members in The Class, but  
21 believes the Class members number in millions, if not more. Thus, this matter  
22 should be certified as a Class action to assist in the expeditious litigation of this  
23 matter.  
24

25           27.   PLAINTIFF and members of The Class were harmed by the acts and  
26 omissions of DEFENDANT in at least the following ways: PLAINTIFF and  
27 CLASS Members have lost the security of their INFORMATION and now face a  
28

1 substantially increased risk of identity theft as a result of DEFENDANT's  
2 misrepresentations, concealments, and failure to disclose its substandard security  
3 protections.  
4

5 28. This suit seeks only damages and injunctive relief for recovery of  
6 economic injury on behalf of the Class and it expressly is not intended to request  
7 any recovery for personal injury and claims related thereto. PLAINTIFF reserves  
8 the right to expand the Class definition to seek recovery on behalf of additional  
9 persons as warranted as facts are learned in further investigation and discovery.  
10  
11

12 29. The joinder of the Class members is impractical and the disposition of  
13 their claims in the Class action will provide substantial benefits both to the parties  
14 and to the court. The Class can be identified through DEFENDANT's records or  
15 DEFENDANT'S agents' records.  
16  
17

18 30. There is a well-defined community of interest in the questions of law  
19 and fact involved affecting the parties to be represented. The questions of law and  
20 fact to the Class predominate over questions which may affect individual Class  
21 members, including the following:  
22

- 23 a. Whether DEFENDANT failed to adequately protect its customers'  
24 INFORMATION pursuant to industry-standard protocols and  
25 technology;  
26  
27  
28



- b. Whether DEFENDANT's conduct and omissions as heretofore alleged are false, misleading, or reasonably likely to deceive its customers;
- c. Whether DEFENDANT failed to disclose material facts relating to the character and quality of its security practices;
- d. Whether DEFENDANT knowingly continued to disseminate false and misleading representations regarding its security practices;
- e. Whether California law applies to the proposed Class;
- f. Whether DEFENDANT's conduct described herein was negligent and/or grossly negligent;
- g. Whether DEFENDANT's conducted described herein constitutes a violation of the California Data Breach Act, Cal. Civ. Code. § 1798.80 *et seq.*;
- h. Whether DEFENDANT violated the California Online Privacy Protection Act, Cal. Bus. & Prof. Code § 22576;
- i. Whether PLAINTIFFS and the members of The Class were damaged by DEFENDANT's conduct, and the extent of damages;
- j. Whether DEFENDANT has engaged in unlawful, unfair, or fraudulent business practices in violation of Cal. Bus. & Prof. Code § 17200 *et seq.*; and

1 k. Whether DEFENDANT should be enjoined from engaging in such  
2 conduct in the future.

3 31. As an individual whose personal information was compromised as a  
4 result of DEFENDANT's wrongful conduct as herein alleged, PLAINTIFF is  
5 asserting claims that are typical of The Class. PLAINTIFF will fairly and  
6 adequately represent and protect the interests of The Class in that PLAINTIFF has  
7 no interests antagonistic to any member of The Class.  
8

9 32. PLAINTIFF and the members of The Class have all suffered  
10 irreparable harm as a result of the DEFENDANT's unlawful and wrongful conduct.  
11 Absent a class action, The Class will continue to face the potential for irreparable  
12 harm. In addition, these violations of law will be allowed to proceed without  
13 remedy and DEFENDANT will likely continue such illegal conduct. Because of  
14 the size of the individual Class member's claims, few, if any, Class members could  
15 afford to seek legal redress for the wrongs complained of herein.  
16

17 33. PLAINTIFF has retained counsel experienced in handling class action  
18 claims.  
19

20 34. A class action is a superior method for the fair and efficient  
21 adjudication of this controversy. Class-wide damages are essential to induce  
22 DEFENDANT to comply with the law. The interest of Class members in  
23 individually controlling the prosecution of separate claims against DEFENDANT  
24  
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1 is small. Management of these claims is likely to present significantly fewer  
2 difficulties than those presented in many class claims.

3 35. DEFENDANT has acted on grounds generally applicable to The  
4 Class, thereby making appropriate final injunctive relief and corresponding  
5 declaratory relief with respect to the Class as a whole.  
6

7  
8 **FIRST CAUSE OF ACTION**

9 **UNLAWFUL COMPETITION LAW, CALIFORNIA BUSINESS AND**  
10 **PROFESSIONS CODE § 17200, et seq.**

11 36. PLAINTIFF incorporates by reference all of the above paragraphs of  
12 this Complaint as though fully stated herein.  
13

14 37. DEFENDANT's acts, practices, and omissions detailed above  
15 constitute unlawful, unfair and/or fraudulent business practices and acts, within the  
16 meaning of *California Business & Professions Code* § 17200 et seq.  
17

18 38. DEFENDANT's acts, practices, and omissions detailed above  
19 constitute fraudulent practices in that they are likely to deceive a reasonable  
20 consumer.  
21

22 39. DEFENDANT's acts, practices, and omissions detailed above,  
23 constitute unlawful practices and/or acts as they constitute violations of numbers  
24 provisions of California law.  
25

26 40. DEFENDANT's acts, practices, and omissions detailed above,  
27 constitute unlawful practices and/or acts in that they violate the California Data  
28

1 Breach Act, Cal. Civ. Code § 1798.80, *et seq.*, and California’s Online Privacy Act  
2 (“OPPA”), Cal. Bus. & Prof. Code § 22576, which prohibits any company whose  
3 website or online service that collects personal identifiable information from  
4 California consumers from “knowingly and willfully” or “negligently and  
5 materially” breaching its own privacy policy.  
6

7  
8 41. DEFENDANT has committed all of the aforesaid acts of infringement  
9 deliberately, willfully, maliciously and oppressively, without regard to  
10 PLAINTIFF’s and The Class’ legal, contractual, and exclusive proprietary rights.  
11

12 42. As a direct and proximate result of DEFENDANT’s unlawful, unfair  
13 and fraudulent business practices as alleged herein, PLAINTIFF and Class  
14 members have suffered injury in fact in the form of INFORMATION theft, ongoing  
15 risk of identity theft, and the need for costly identity protection services in the  
16 future. Meanwhile, DEFENDANT has continued to administer the donations of  
17 automobiles at a substantial profit to only itself.  
18  
19

20 43. Pursuant to *California Business & Professions Code* §17203,  
21 PLAINTIFF seeks an order of this Court prohibiting DEFENDANT from engaging  
22 in the unlawful, unfair, or fraudulent business acts or practices set forth in this  
23 Complaint and/or ordering DEFENDANT perform its obligations under the law  
24 and the cancellation of any illegal obligations. PLAINTIFF additionally requests  
25 an order from the Court requiring that DEFENDANT provide complete equitable  
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1 relief, including that DEFENDANT disgorge profits and return or pay to  
2 PLAINTIFF and the members of The Class all of Defendant's ill-gotten gains  
3 obtained from the contract or transaction entered into, and/or pay restitution.  
4 PLAINTIFF also requests a court order that an asset freeze or constructive trust be  
5 imposed over all monies in DEFENDANT's possession which rightfully belong to  
6 PLAINTIFF and The Class.  
7  
8

## 9 **SECOND CAUSE OF ACTION**

### 10 **VIOLATION OF THE CALIFORNIA DATA BREACH ACT, CAL CIV.** 11 **CODE § 1798.80, *et seq.***

12  
13 44. PLAINTIFF incorporates by reference all of the above paragraphs of  
14 this Complaint as though fully stated herein.

15  
16 45. The July 2012 through May 2015 data breach constituted a "breach of  
17 the security system" of DEFENDANT pursuant to Cal. Civ. Code § 1798.82(g).

18  
19 46. DEFENDANT recklessly, or as a matter of gross negligence, failed to  
20 provide reasonable and adequate security measures.

21  
22 47. DEFENDANT unreasonably delayed informing PLAINTIFF and  
23 members of The Class about the security breach of The Class members'  
24 INFORMATION after DEFENDANT knew of the breach.

25  
26 48. DEFENDANT failed to disclose to PLAINTIFF and members of The  
27 Class, in the most expedient time possible, the breach of security of their  
28 INFORMATION after DEFENDANT knew of the breach.

1           49. As a result of DEFENDANT's violation of Cal. Civ. Code § 1798.82,  
2 PLAINTIFF and members of the Class suffered economic damages relating to  
3 expenses for credit monitoring and other related expenses.  
4

5           50. PLAINTIFF, individually and on behalf of the members of The Class,  
6 seeks all remedies available under Cal. Civ. Code § 1798.84.  
7

8           51. PLAINTIFF, individually and on behalf of the members of The Class,  
9 also seeks reasonable attorneys' fees and costs under Cal. Civ. Code § 1798.84(g).  
10

11                           **THIRD CAUSE OF ACTION**

12                           **COMMON LAW NEGLIGENCE**

13           52. PLAINTIFF incorporates by reference all of the above paragraphs of  
14 this Complaint as though fully stated herein.  
15

16           53. DEFENDANT's conduct described herein constituted an  
17 unreasonable breach of its duty of care owed to PLAINTIFF actually and  
18 proximately causing PLAINTIFF damages thereby.  
19

20           54. As a recipient and beneficiary of PLAINTIFF's entrustment of  
21 INFORMATION, DEFENDANT owed PLAINTIFF a duty to keep PLAINTIFF's  
22 INFORMATION secure from hackers.  
23

24           55. DEFENDANT did not comply with its duty to keep INFORMATION  
25 safe.  
26  
27  
28

1           56. But for DEFENDANT's breach of duty, PLAINTIFF's  
2 INFORMATION would still be secure.

3           57. Loss of security of INFORMATION, threats of identity theft, the need  
4 for costly identity theft and credit watch services, and other damages are precisely  
5 the kinds of risks and harm that make DEFENDANT's conduct negligent.  
6 DEFENDANT is therefore the proximate cause of PLAINTIFF's injury.  
7  
8

9           58. PLAINTIFF, as well as class members, suffered substantial loss of  
10 INFORMATION, ongoing threats of identity theft, and further harm as a result of  
11 DEFENDANT's negligence.  
12

13           59. Therefore, DEFENDANT is liable to PLAINTIFF and The Class for  
14 its negligence.  
15

16                           **PRAYER FOR RELIEF**

17           WHEREFORE, PLAINTIFF respectfully requests that the Court grant  
18 PLAINTIFF and The Class members the following relief against DEFENDANT:  
19

- 20           a. An order certifying the proposed class and appointing PLAINTIFF and  
21 PLAINTIFF's counsel to represent The Class;  
22  
23           b. Injunctive relief prohibiting DEFENDANT from engaging in such  
24 conduct as alleged herein in the future;  
25  
26           c. Actual, statutory and/or punitive damages;  
27  
28

- 1 d. Restitution, or any other equitable relief the Court may deem just and  
2 proper;  
3 e. Reasonable attorneys' fees and costs of the suit, including expert witness  
4 fees; and  
5 f. Any other relief the Court may deem just and proper.  
6

7  
8 **TRIAL BY JURY**

9 Pursuant to the Seventh Amendment to the Constitution of the United States  
10 of America, PLAINTIFF is entitled to, and demands, a trial by jury.  
11

12  
13 Dated: January 13, 2017

Respectfully Submitted

14  
15  
16 By: /s/ Todd M. Friedman

17  
18 Todd M. Friedman, Esq.  
19 Law Offices of Todd M. Friedman, P.C.  
20 *Attorney for Plaintiffs*  
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